

Rice County Buffer Ordinance

CHAPTER 640 STATUTORY AUTHORIZATION AND PURPOSE

640.1 Statutory Authorization: This buffer ordinance is adopted pursuant to the authorization and policies contained in Minn. Stat. §103F.48, the Buffer Law, and the County planning and zoning enabling legislation in Minn. Stat. chapter 394.

640.2 Purpose and Intent. It is the purpose and intent of Rice County to:

- (a) Provide for riparian vegetated buffers and water quality practices to achieve the following purposes:
 - (1) Protect state water resources from erosion and runoff pollution;
 - (2) Stabilize soils, shores and banks; and
 - (3) Protect or provide for riparian corridors.

- (b) Coordinate the implementation and enforcement of the water resources riparian protection requirements of Minn. Stat. §103F.48 with the shoreland management rules and ordinances adopted under the authority of Minn. Stat. §103F.201 to 103F.227 and the management of public drainage systems established under Minn. Stat. chapter 103E where applicable.

CHAPTER 641 GENERAL PROVISIONS

641.1 Definitions. Unless specifically defined below, words or phrases used in this ordinance shall be interpreted to give them the same meaning they have in common usage and to give this ordinance its most reasonable application. For the purpose of this ordinance, the words “must” and “shall” are mandatory and not permissive. All distances, unless otherwise specified, are measured horizontally.

“**APO**” means the administrative penalty order issued pursuant to Minn. Stat. §103F.48, subd. 7 and Minn. Stat. §103B.101, subd. 12a.

“**Buffer**” has the meaning provided in Minn. Stat. §103F.48, subd. 1(c).

“**Buffer protection map**” has the meaning provided in Minn. Stat. §103F.48, subd. 1(d) and which are available on the Department of Natural Resources website.

“**BWSR**” means the Board of Water and Soil Resources.

“**County**” means Rice County, Minnesota

“**Cultivation farming**” means farming practices that disturb root or soil structure or that impair the viability of perennial vegetation due to cutting or harvesting near the soil surface.

“**Drainage authority**” has the meaning provided in Minn. Stat. §103E.005, subd. 9.

“**Landowner**” means the holder of the fee title, the holder’s agents or assigns, any lessee, licensee, or operator of the real property and includes all land occupiers as defined by Minn. Stat. §103F.401, subd. 7 or any other party conducting farming activities on or exercising control over the real property.

“**Parcel**” means a unit of real property that has been given a tax identification number maintained by the County.

"Public drainage system" has the meaning given to "drainage system" in Minn. Stat. §103E.005, subd. 12.

"Local water management authority" has the meaning provided in Minn. Stat. §103F.48, Subd. 1(g).

"Normal water level" means the level evidenced by the long-term presence of surface water as indicated directly by hydrophytic plants or hydric soils or indirectly determined via hydrological models or analysis.

"SWCD" means Rice Soil and Water Conservation District.

- 641.2 Severability:** If any section, clause, provision, or portion of this ordinance is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected thereby.
- 641.3 Interpretation:** In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements and shall be liberally construed in favor of the Governing Body and shall not be deemed a limitation or repeal of any other powers granted by state statutes.
- 641.4 Abrogation and Greater Restrictions:** It is not intended by this Ordinance to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall prevail.
- 641.5 Existing Nonconformities** Where the provisions of any statute, other ordinance or regulation imposes greater restrictions than this ordinance, the provisions of such statute, other ordinance or regulation shall be controlling. The continuation of existing nonconformities provided for by Minnesota Statutes §394 and §462 shall not apply to this ordinance and Minnesota Statutes §103F.48.

CHAPTER 642 JURISDICTION

- 642.1 Jurisdiction.** The provisions of this ordinance apply to all waters, shown on the buffer protection map.

CHAPTER 643 BUFFER REQUIREMENTS

- 643.1 Buffer width.** Except as provided in sections 643.4 and 643.5 a landowner owning property adjacent to a water body identified on the buffer protection map must establish and maintain a buffer area as follows:
- (a) For waters shown on the buffer protection map requiring a fifty (50) foot width buffer, the buffer width will be fifty (50) foot average and thirty (30) foot minimum width as provided in Minn. Stat. §103F.48, subd. 3 and as measured according to section 643.2; and
 - (b) For waters shown on the buffer protection map requiring a sixteen and a half (16.5) foot minimum width buffer, the buffer width will be sixteen and a half (16.5) feet as provided in Minn. Stat. §103F.48, subd. 3 and as measured according to section 643.2
- 643.2 Measurement.**
- (a) The width of any required buffer on land adjacent to a water requiring a fifty (50) foot average width and a thirty (30) foot minimum width buffer shall be measured from the top or crown of the bank.

Where there is no defined bank, measurement must be from the edge of the normal water level as provided in Minn. Stat. §103F.48, subd. 3(c).

(b) The width of any required buffer on land adjacent to a water requiring a sixteen and a half (16.5) foot minimum width buffer shall be measured in the same manner as for measuring the vegetated grass strip under Minn. Stat. §103E.021, subd. 6 as provided in Minn. Stat. §103F.48, subd. 3(c).

643.3 Use of buffer area. Except as provided in sections 643.4 and 643.5 a buffer as defined in this ordinance may not be put to any use, including but not limited to cultivation farming, which would remove or prevent the permanent growth of perennial vegetation.

643.4 Exemptions. The requirement of section 643.1 does not apply to land that is exempted from the water resources riparian protection requirements under Minn. Stat. §103F.48, subd. 5.

643.5 Alternative practices. As provided in Minn. Stat. §103F.48, subd. 3(b) an owner of land that is used for cultivation farming may demonstrate compliance with section 643.1 by establishing and maintaining an alternative riparian water quality practice(s), or combination of structural, vegetative, and management practice(s) which provide water quality protection comparable to the water quality protection provided by a required buffer as defined in sections 643.1, 643.2 and 643.3. The adequacy of any alternative practice allowed under this section shall be based on:

(a) the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG);

(b) common alternative practices adopted and published by BWSR;

(c) practices based on local conditions approved by the SWCD that are consistent with the Natural Resources Conservation Service (NRCS) Field Office Technical Guide (FOTG); or

(d) other practices adopted by BWSR.

CHAPTER 644 COMPLIANCE

644.1 Compliance Determinations. Compliance with the buffer requirements set forth in section 643 will be determined by the SWCD on a parcel by parcel basis. The compliance status of each bank, or edge of a waterbody on an individual parcel will be determined independently.

644.2 Compliance Review/Investigation Procedure. When the SWCD identifies a potential noncompliance issue with a buffer requirement or receives a third party complaint from a private individual, entity, or public agency, the SWCD shall determine whether the parcel is in compliance by conducting an investigation, which may include, but not be limited to: evaluating any available and relevant documentation: evaluating or inspecting the buffer: considering any alternative practices.

644.3 Compliance Notifications. Upon completion of a compliance investigation the SWCD shall issue a written compliance determination to the landowner, the County and BWSR. The SWCD determination will take the form of a Validation of Compliance or a Notification of Noncompliance.

644.4 Corrective Action Notice. Upon receipt of an SWCD Notification of Noncompliance, the County will issue the landowner a Corrective Action Notice. The Notice may also include an Administrative Penalty Order (APO). The Corrective Action Notice will include the following:

- (a) a list of corrective actions needed to come into compliance with the requirements of Minn. Stat. §103F.48 and this ordinance;
- (b) a timeline for complying with the required corrective actions;
- (c) the process for modification of the corrective actions or timeline;
- (d) the process for review of compliance with the corrective actions and release of the Corrective Action Notice;
- (e) a statement that failure to comply with the provision of the Corrective Action Notice may result in the assessment of criminal, civil or administrative penalties.

644.5 Corrective Action Notice/APO Compliance Verification. Once a landowner has submitted to the County written evidence of correction of the violation(s) set forth in the Notice of Compliance and/or APO, compliance must be verified. Verification by the County shall include:

- (a) Review and evaluate all information related to the Corrective Action Notice and/or APO to determine if the violation has been corrected;
- (b) Verify and document compliance by site visit, re-inspection, examination of documentation, or other means as may be reasonable under the facts of the case;
- (c) If the County determines the violation was not fully corrected, the County shall notify the landowner by issuing a written letter of determination. The landowner shall have an additional 20 days after receipt of the letter of determination to pay the penalty or the time period specified in the APO as issued, whichever is later. The penalty will continue to accrue until the violation is corrected as provided in the Corrective Action Notice and/or APO.

644.6 Reporting and documentation. The County shall maintain the following records for any potential violation of the riparian protection and water quality practices requirements. Said records shall include the following:

- (a) The cause of the violation;
- (b) The magnitude and duration of the violation;
- (c) Documentation showing whether the violation presents an actual or imminent risk to public health and safety;
- (d) Documentation showing whether the violation has the potential to harm to the natural resources of the state;
- (e) A record of past violations;
- (f) Efforts by the SWCD, County, Watershed District or BWSR to assist the responsible party or parties to become compliant, including written and oral communications with the responsible party or parties ; and
- (g) Past and present corrective action efforts by the responsible party or parties.

CHAPTER 645 ENFORCEMENT

645.1 Discretion. The County may, at its own discretion, elect to pursue the failure to comply with a Corrective Action Notice or other violation of this ordinance either criminally, through an Administrative Penalty Order (APO), or by other lawful action.

645.2 Misdemeanor. Failure to comply with a Corrective Action Notice issued under this ordinance constitutes a misdemeanor and shall be punishable as defined by law.

645.3 Administrative Penalty Orders. The County may issue an APO as provided for in Minn. Stat. §§103F.48, subd. 7(b) and (c) and 103B.101, subdivision 12a to a landowner who has failed to take the corrective action set forth in the Corrective Action Notice. Copies of an APO shall be sent to the SWCD and BWSR.

(a) Minimum inclusions. APOs shall include the following:

- i. The facts constituting the violation of the riparian protection and water quality practices requirements set forth in section 643 of this ordinance or Minn. Stat. §103F.48 ;
- ii. The specific statute and/or ordinance section(s) that has/have been violated;
- iii. A written description of prior efforts to work with the landowner to resolve the violation;
- iv. The amount of the penalty to be imposed;
- v. The date the penalty will begin to accrue;
- vi. The date that payment of the penalty is due;
- vii. The date by which all or part of the penalty may be forgiven if the landowner has complied with the Corrective Action Notice; and
- viii. A statement of the landowner's right to appeal the APO.

(b) Appeal Process Within 30 days after receipt of the APO, a landowner may appeal the terms and conditions of an APO issued by the County to BWSR as provided in Minn. Stat. §103F.48, subd. 9. The appeal must be in writing and must include a copy of the APO that is being appealed, the basis for the appeal and any supporting evidence. The appeal may be submitted personally, by U.S. mail, or electronically, to the Executive Director of BWSR. Any APO that is not appealed within the 30 day period shall be deemed final.

(c) Penalty amounts Penalties assessed under this section shall continue until the Corrective Action Notice has been satisfied.

- i. Initial violation. The penalty for a landowner on a single parcel that has not previously been the subject of an APO issued by the County shall be:
 - a) \$0 for 11 months after issuance of the Corrective Action Notice;
 - b) \$50 - \$200 per parcel per month for the first six (6) months (180 days) following the time period in a; and
 - c) \$200 - \$500 per parcel per month after six (6) months (180 days) following the time period in b.
- ii. Repeat violation. The penalty for a landowner on a single parcel that has previously been the subject of an APO issued by the County shall be:
 - a) \$50 - \$200 per parcel per day for 180 days after issuance of the Corrective Action Notice; and
 - b) \$200 - \$500 per parcel per day for after 180 days following the time period in a.

- (d) Penalty Forgiveness: All or part of the penalty may be forgiven pursuant to Minn. Stat. §103F.48, subd. 7(d) based on the correction by the landowner of the noncompliance by the date specified in the APO.
- (e) Compliance Verification: APO compliance verification shall follow the procedure found in Section 644.5 of this Ordinance.
- (f) Payment Due Unless the landowner appeals the APO as provided in section 645.3.b the penalty specified in the APO becomes immediately due and payable to the County as set forth in the APO. If, however, the landowner submits written documentation that the violation has been corrected prior to the time the penalty becomes due and payable the County shall verify compliance and adjust the penalty to an amount the landowner would have owed had the penalty been paid on the date the landowner submitted written documentation of compliance. If the County determines the violation was not fully corrected the County shall notify the landowner of the deficiencies in the form of a written notice.
- (g) Collection of Penalty All penalties and interest assessed under an APO must be paid by the landowner within the time specified in the APO and this Ordinance. All payments shall be made payable to the County. Any penalty or interest not received in the specified time may be collected by the County using any lawful means.

645.4 Other Lawful Action. Nothing herein contained shall prevent Rice County from taking such other lawful action as is necessary to prevent or remedy any violation.

EFFECTIVE DATE: This Ordinance shall be in full force and effect from and after its passage and approval and publication, as required by law.

Adopted by the Rice County Board of Commissioners

This XXth of XXXXX, 2017.

_____, County Board Chairperson

Attest: _____, County Administrator